

## **GUIDELINES FOR CONDUCT OF PRE-ARGUMENT CONFERENCE UNDER THE CIVIL APPEALS MANAGEMENT PLAN**

The conference is held by Staff Counsel with attorneys for the parties under Rule 5 of the Civil Appeals Management Plan.

### **1. Purposes**

The purposes are to consider the possibility of settlement, simplification of the issues, and any other matters which may aid in the processing and disposition of the appeal.

Experience shows that preliminary review of the issues by the parties with Staff Counsel often leads to a realistic and less partisan view of the chances of success, resulting in settlement or withdrawal of some appeals or particular issues.

With a view to enabling the parties to resolve issues, Staff Counsel, after hearing counsel, is ordinarily expected to give them the benefit of Staff Counsel's views of the merits or other aspects of the appeal.

### **2. Authority, Preparation and Attitude of Parties**

The success of the conference depends on the attorneys treating it as a serious and non-perfunctory procedure which can often save time and expense for the parties. All sides should be thoroughly prepared to discuss in depth the alleged errors and the reasons for their positions. Attorneys with primary responsibility for the litigation shall attend the conference, and such counsel shall have full authority from their clients to make such commitments as may reasonably be anticipated. If feasible, the clients should be available for consultation by phone during the conference.

### **3. Good Faith and Non-Coerciveness**

The parties are obligated to participate in good faith with a view to resolving differences as to the merits and issues. This process requires each attorney, no matter how strong the attorney's views, to exercise a degree of objectivity, patience and cooperation that will permit the attorney to make a decision based on reason. In this process the Staff Counsel, who provides objective expertise in a forum for appraisal of the merits and expedition of each appeal, is entitled to their respect and the Staff Counsel's views should be carefully considered. The Staff Counsel's views, however, are Staff Counsel's own and not those of the court, with which Staff Counsel does not communicate about a case. If, after this procedure, attorneys believe in good conscience that they cannot reach an agreement, they are not under any compulsion to do so.

### **4. Confidentiality**

All matters discussed at a conference, including the views of Staff Counsel as to the

merits, are confidential and not communicated to any member of the court. Likewise parties are prohibited from advising members of the court or any unauthorized third parties of discussions or action taken at the conference. *In re Lake Utopia Paper Limited*, 608 F.2d 928 (2d Cir. 1979). Thus the court never knows what transpired at a conference.

**5. Presence of Clients**

Ordinarily attorneys are expected to attend the conference without their clients. However, with the permission of Staff Counsel, clients may attend with their attorneys. In the limited number of cases where Staff Counsel reasonably believes that the presence of a client might be helpful Staff Counsel may request--or, in exceptional circumstances, require--an attorney to have the client attend the conference with the attorney. Staff Counsel does not talk with clients outside of the presence of their attorneys.

**6. Conferences by Telephone or at Distant Locations**

Where considerable distances or other substantial reasons warrant, Staff Counsel may in appropriate cases conduct prearranged telephonic conferences. Where a sufficient number of cases can be accumulated and judicial efficiency and economy permit, Staff Counsel may also hold conferences within the Circuit, at locations other than Foley Square, New York City.

These provisions are designed to accommodate parties whose attorneys would otherwise be seriously inconvenienced by being forced to travel long distances or for other reasons.

**7. Scheduling Orders**

In the interest of obtaining prompt resolution of appeals, most scheduling orders in the Second Circuit are somewhat tighter than the schedules provided for in the Federal Rules of Appellate Procedure. See FRAP 31(a).

**8. Grievances**

Any grievances as to the handling of any case under the CAMP program should be addressed to the Elizabeth Cronin, Director of Legal Affairs, 40 Foley Square, Room 612, New York, New York 10007.